

** NOT FOR PRINTED PUBLICATION **
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

REYNALDO VASQUEZ	§	
VS.	§	CIVIL ACTION NO. 9:21cv44
C.O. SMITH	§	

ORDER PARTIALLY ACCEPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Reynaldo Vasquez, an inmate at the Lewis Unit, proceeding *pro se*, brought the above-styled lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing this action without prejudice pursuant to Fed. R. Civ. P. 41(b) for want of prosecution.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. No objections to the Report were filed by the parties. However, on April 23, 2021, plaintiff filed a motion to dismiss the action.

Plaintiff is entitled to dismiss the case prior to the service of an answer or a motion for summary judgment. FED. R. CIV. P. 41(a)(1). In this case, the opposing party has filed neither an answer nor a motion for summary judgment. Therefore, plaintiff's motion to dismiss the action should be granted. Accordingly, the Report will be partially accepted to the extent it recommended dismissal. However, the dismissal will be pursuant to plaintiff's motion to dismiss under Fed. R. Civ. P. 41(a) instead of Fed. R. Civ. P. 41(b), as recommended in the Report.

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ORDER

Accordingly, the Report of the Magistrate Judge is partially **ACCEPTED** to the extent it recommended dismissal without prejudice. It is further

ORDERED that plaintiff's motion to dismiss is **GRANTED**. A final judgment will be entered in this case in accordance with this order.

So ORDERED and SIGNED, May 01, 2021.

A handwritten signature in black ink, appearing to read "Ron Clark", written over a horizontal line.

Ron Clark
Senior Judge